

**Introduced by Senator Negrete McLeod**

February 19, 2008

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An act to add Section 24342 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, as introduced, Negrete McLeod. Corporation taxes: deduction: group self-insurer.

The Corporation Tax Law allows various deductions in computing income that is subject to the taxes imposed by that law, including a deduction for the ordinary and necessary expenses paid or incurred in carrying on a trade or business.

This bill would authorize a group self-insurer to elect to take a deduction for the lesser of member contributions paid to the group self-insurer, net of contributions refunded to members, or the amount as prescribed by a specified regulations. This bill would prohibit the insurer from being included in a combined report, as specified, except as provided. This bill would make legislative findings and declarations in connection thereto, and state the Legislature's intent that an insurer may elect to have the tax provisions apply retroactively, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 24342 is added to the Revenue and
- 2 Taxation Code, to read:

1 24342. (a) Except as provided in subdivision (b), a group  
2 self-insurer shall not be included in a combined report pursuant to  
3 Chapter 17 (commencing with Section 25101).

4 (b) If the Franchise Tax Board determines that the reported  
5 income or loss of a group of commonly owned or controlled  
6 corporations, within the meaning of Section 25105, which group  
7 includes one or more corporations treated as a group self-insurer,  
8 does not clearly reflect income, or loss, of a member of that group  
9 or represents an evasion of tax by one or more members of that  
10 group, and the Franchise Tax Board further determines that the  
11 comparable uncontrolled price method prescribed by regulations  
12 promulgated under Section 482 of the Internal Revenue Code  
13 cannot practically be applied, the Franchise Tax Board may, in  
14 lieu of other methods prescribed by regulations promulgated under  
15 Section 482 of the Internal Revenue Code, apply methods of  
16 unitary combination, pursuant to Article 1 (commencing with  
17 Section 25101) of Chapter 17, to properly reflect the income or  
18 loss of the members of the group.

19 (c) (1) Except as otherwise provided, subdivision (a) of Section  
20 24405 shall apply to a group self-insurer.

21 (2) The amount of the deduction allowed under subdivision (a)  
22 of Section 24405 shall be limited to the lesser of either of the  
23 following:

24 (A) Actual member contributions paid to the group self-insurer,  
25 net of contributions refunded to members.

26 (B) The amount prescribed by subdivision (d) of Section 15481  
27 of Title 8 of the California Code of Regulations.

28 (3) No deduction for compensation, as defined in Section 3207  
29 of the Labor Code, or claims, losses, or expenses attributable to  
30 amounts deductible under this subdivision shall be allowed.

31 (d) For purposes of this section, “group self-insurer” means any  
32 person or entity established pursuant to subdivision (b) of Section  
33 3700 of the Labor Code that is described under subdivision (s) of  
34 Section 15201 of Title 8 of the California Code of Regulations or  
35 any person or entity that would be so established and described if  
36 it was doing business in this state.

37 SEC. 2. The Legislature finds and declares that the changes  
38 made by Section 1 of this act serve a public purpose and are  
39 necessary to provide for the equitable tax treatment of a group  
40 self-insurer in light of the following:

1 (a) In 1993, the Legislature authorized the establishment of  
2 private industry group self-insurers as part of the major workers'  
3 compensation reform package. Group self-insurer is defined in  
4 regulations as a private, nonprofit, mutual benefit corporation  
5 established for the sole purpose of operating a group workers'  
6 compensation self-insurance fund for two or more private employer  
7 members in the same industry under the California workers'  
8 compensation statutes and regulations. The authorization for the  
9 formation of these groups provide a cost savings alternative for  
10 employers to comply with the obligation to secure the payment of  
11 workers' compensation for their employees.

12 (b) The primary source of funds for a group self-insurer for  
13 payment of workers' compensation claims is from contributions  
14 paid by its employer members. A large amount of the contributions  
15 received from employer members in any given year must be put  
16 into reserves for the potential payment of future workers'  
17 compensation claims. Tax consequences occur because group  
18 self-insurers are taxed as corporations and the amount of  
19 contributions collected and put into reserves, net of claims paid  
20 out, is taxable at the corporate tax rate of 8.84 percent, thereby  
21 reducing the amount of reserves otherwise available to pay for  
22 claims that have not yet matured. This act serves a public purpose  
23 and promotes sound tax policy by affording equitable tax relief to  
24 group self-insurers by treating these groups similarly to  
25 cooperatives that operate primarily for the benefit of the  
26 organization's members.

27 SEC. 3. The Legislature finds and declares that the group  
28 self-insurer's investment income, including investment income  
29 earned on contributions, shall be subject to taxation at the corporate  
30 tax rate to prevent possible state income tax avoidance schemes  
31 inconsistent with the purpose of this act to provide limited relief  
32 to group self-insurers as described in Section 2 of this act.

33 SEC. 4. It is the intent of the Legislature that a group  
34 self-insurer may elect to apply the provisions of this act to all  
35 taxable years that remain open for the filing of a claim for refund.  
36 The Legislature finds and declares that no inference should be  
37 drawn from the changes made with respect to Section 24342 of  
38 the Revenue and Taxation Code as added by this act.

1 SEC. 5. This act provides for a tax levy within the meaning of  
2 Article IV of the Constitution and shall go into immediate effect.

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